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Joint Committee on Taxation
October 15, 1991
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COMMITTEE ON WAYS AND MEANS

MARK-UP OF

HIGHWAY TRUST FUND EXTENSION

I. Legislative Background

A. H.R. 2950, as Reported in July 1991

Highway and Mass Transit Authorizations

H.R. 2950 (the "Intermodal Surface Transportation Infrastructure Act of 1991") originally was reported by the House Committee on Public Works and Transportation ("Public Works") on July 26, 1991 (H. Rept. 102-171, Part 1). H.R. 2950 provided authorizations for five years (fiscal years 1992-1996) for highway, transit, and related programs. Prior highway and mass transit authorizations expired on September 30, 1991. The Public Works bill provided a five-year total of Highway Trust Fund ("HTF") highway and transit authorizations of $143.0 billion, comprised of $121.5 billion from the HTF's Highway Account and $21.5 billion from the HTF's Mass Transit Account. The bill also provided $10.5 billion in mass transit authorizations from the General Fund, for an aggregate five-year authorization total of $153.5 billion.

Highway Trust Fund Extension and Financing

H.R. 2950, as originally reported, was sequentially referred to the Committee on Ways and Means for consideration of a revenue title. This committee approved a committee amendment to H.R. 2950 on July 31, 1991 (H. Rept. 102-171, Part 2, August 2, 1991). The committee amendment extended the current highway-related excise taxes (the "HTF taxes") (including the 2.5-cents-per-gallon general fund tax on motor fuels) as well as the taxes on motorboat and small engine fuels and train diesel fuel for three years (through September 30, 1998).

The committee amendment also provided for a 5-cents-per-gallon increase in the highway and motorboat fuels tax rates for the period January 1, 1992, through September 30, 1996, with a transfer to the HTF of the net revenues attributable to this increase. Further, the committee amendment extended authority to spend from the HTF through September 30, 1996, and incorporated the trust fund

J862-37
H782-44

expenditure purposes included in H.R. 2950 into the Internal Revenue Code (the "Code").

After the committee acted, H.R. 2950 was removed from consideration by the House pending revisions to the authorization levels by Public Works.

B. Revised Authorization Provisions

On October 15, 1991, Public Works approved a committee amendment in the nature of a substitute to H.R. 2950, as originally reported. The Public Works amendment authorizes highway and mass transit expenditures for six years (rather than five years as originally proposed), and sets lower authorization levels for each of the years in the five-year "budget window," as compared to H.R. 2950 as reported.

The Committee on Ways and Means has been asked to consider an extension through September 30, 1999, of the excise taxes which are now deposited in the HTF in order to provide a revenue source for the reformulated HTF authorization provisions. The committee has been asked to complete its action by October 16, 1991.

II. Present Law

A. Tax Provisions

Highway-Related Excise Taxes

Excise taxes are imposed on gasoline and diesel and special motor fuels, certain heavy trucks and truck trailers, heavy tires, and the use of heavy highway vehicles. (See below for a table of the present HTF excise tax rates and for the amounts transferred to the HTF.)

The HTF taxes were extended through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990 (the "1990 Act"). The 1990 Act also increased the highway and motorboat fuels tax rates by five cents per gallon and imposed a new tax of 2.5 cents per gallon on diesel fuel used in trains (through September 30, 1995).

The following table shows the current HTF taxes and rates:

Tax	Tax rate (through 9/30/95)
Motor fuels[1]:	
Gasoline and special motor fuels (including gasoline used in motorboats)	14 cents per gallon (11.5 cents per gallon is transferred to the HTF)[2]
Diesel fuel	20 cents per gallon (17.5 cents per gallon is transferred to the HTF)
Trucks and trailers:	
Trucks (over 33,000 lbs.) and trailers (over 26,000 lbs.)	12 percent of retail price

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1 Motor fuels also are subject to a separate tax of 0.1 cent per gallon through December 31, 1995, to fund the Leaking Underground Storage Tank Trust Fund.

2 11.5 cents per gallon of the tax attributable to gasoline used in motorboats and certain small engines is transferred from the HTF to the Aquatic Resources Trust Fund the ("Aquatic Fund"), through September 30, 1995. There are two separate accounts in this Trust Fund: the Boat Safety Account and the Sport Fishing Account.

Amounts transferred to the Boat Safety Account of the Aquatic Fund are available for expenditure through March 31, 1994. No comparable expenditure sunset is provided for the Sport Fishing Account of that Fund. Amounts in the Sport Fishing Account are permanently appropriated as annual grants to States for sport fish management projects and for certain wetlands projects. The Committee on Merchant Marine and Fisheries has requested the Committee on Ways and Means to extend the above-mentioned dates to conform to those provided for HTF expenditure authority.

Tires for highway vehicles:	40 lbs. or less--no tax 40-70 lbs.--15 cents/lb. over 40 lbs. 70-90 lbs.--$4.50, plus 30 cents/lb. over 70 lbs. Over 90 lbs.--$10.50, plus 50 cents/lb. over 90 lbs.
Annual use tax on heavy highway vehicles:	Under 55,000 lbs.--no tax 55,000-75,000 lbs.--$100, plus $22/1,000 lbs. over 55,000 lbs. Over 75,000 lbs.--$550

Revenues equivalent to 2.5 cents per gallon of the taxes on highway and motorboat fuels are retained in the General Fund; the balance of the highway and motorboat fuels tax revenues is transferred to the HTF.[3] Revenues from the tax on train diesel fuel are retained in the General Fund. All revenues from the non-fuels HTF taxes are transferred to the HTF.

Revenues equivalent to 1.5 cents per gallon of the taxes on highway motor fuels that are transferred to the HTF are credited to the Mass Transit Account of the HTF. The balance of the highway motor fuels tax revenues (and the revenues from the other highway excise taxes) is credited to the HTF's Highway Account.

The HTF taxes, the motorboat fuels tax, and the tax on train diesel fuel currently are scheduled to expire on September 30, 1995. HTF expenditure authority is scheduled to expire on October 1, 1993.

Exemptions

Exemptions generally are provided from the HTF taxes for State and local governments and tax-exempt educational organizations. The highway motor fuels taxes also do not apply to fuels used in off-highway business uses (e.g., farming) or in local or school buses. The diesel fuel tax does not apply to motorboat use.

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[3] Revenues from the taxes imposed on motorboat and small engine fuels are then transferred from the HTF to the Aquatic Fund.

Intercity buses are exempt from all but three cents per gallon of the HTF motor fuels taxes. A series of partial exemptions apply to alcohol fuels and fuels mixtures. The most widely used of these is a 5.4-cents-per-gallon exemption for "gasohol," a mixture of gasoline and at least 10-percent ethanol.

B. Highway Trust Fund

Highway/Transit Funding Provisions

Highway Account

The Code provides that amounts in the HTF are to be available through September 30, 1993, as provided in appropriation acts, for meeting obligations incurred which are authorized to be paid out of the HTF under (1) the Highway Revenue Act of 1956, (2) Title I or II of the Surface Transportation Assistance Act of 1982 (the "1982 Act"), (3) the Surface Transportation and Uniform Relocation Act of 1987 (the "1987 Act"), or (4) thereafter, amounts for a general purpose authorized under these Acts as in effect on the date of enactment of the 1987 Act. The 1982 Act established the separate highway and mass transit accounts in the HTF.

The present-law expenditure purposes for the Highway Account include the following highway-related programs:

- Interstate highways and resurfacing and repair;
- Federal-aid highways, including primary and secondary systems and urban systems;
- Forest and public lands highways, scenic highways, parkways, Indian reservation roads;
- Bridge replacement and rehabilitation;
- Emergency (disaster) relief;
- Highway safety research and development;
- Highway-related safety grants;
- Motor carrier safety grants;
- Traffic control demonstration grants;
- Highway hazard elimination projects;
- Rail crossings and demonstration projects;
- Traffic control signal demonstration projects;
- Urban system public transportation projects (bus and rail transit facilities on a federal-aid urban system);
- Fringe and corridor parking facilities;
- Carpool and vanpool grants;
- Bicycle ways and pedestrian walkways;
- National Highway Traffic Safety Administration (NHTSA) traffic safety programs;
- Certain administrative costs of the Federal Highway Administration and the NHTSA;

-- University transportation research centers; and
-- Highway beautification projects.

Mass Transit Account

The Code provides that amounts in the Mass Transit Account of the HTF are available through September 30, 1993, as provided in appropriation acts, for making capital expenditures (including new projects) under section 21(a)(2) of the Urban Mass Transportation Act of 1964 ("UMTA").[4] UMTA also provides for additional Mass Transit Account authorizations from the HTF (sec. 21(b)).[5]

Highway Trust Fund Anti-Deficit Provisions

HTF taxes generally have been extended for two years beyond the then-current authorization period. This is due to the lead time required between the time a project is authorized or obligated and the time money is needed to pay for it. Also, the so-called "Byrd Amendment" requires that highway apportionments be reduced proportionately if highway account authorizations exceed estimated HTF receipts (including interest, minus transfers) in the following 24-month period. Transit authorizations may not exceed estimated mass transit account receipts in the following 12-month period.

III. Overview of Revised Public Works Highway and Mass Transit Authorization Provisions

A. Overall Funding Assumptions

The revised Public Works authorization provisions ("the Public Works amendment") extend HTF expenditure authorizations for six years, through September 30, 1997. The funding levels provided in the Public Works amendment are based on the present HTF taxes and rates and an assumed extension from October 1, 1995, through September 30, 1999,

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[4] Section 21(a)(2) authorizes Mass Transit Account expenditures to carry out UMTA section 3 (construction and rolling stock, including buses and bus facilities), section 4(i) (deployment of innovative techniques and methodologies in the management and operation of public transportation services), section 8 (planning and technical studies), and section 16(b) (mass transit grants to assist needs of the elderly and handicapped).

[5] Section 21(b) authorizes additional Mass Transit Account amounts to carry out UMTA sections 3 (as noted above) and 9B (mass transit account block grants for construction projects, including capital maintenance items).

of the present-law HTF tax rates (but not the present-law 2.5-cents-per-gallon deficit-reduction rate for motor fuels).

B. Revised HTF Authorizations

The Public Works amendment provides authorizations generally for the same purposes as those included in H.R. 2950, as originally reported. The Public Works amendment provides a total of $151 billion in highway and mass transit authorizations for the six-year period (fiscal years 1992-1997), including $119 billion for highway projects and $32 billion for mass transit projects.

The Public Works amendment, like the originally reported bill, includes annual funding for highway use tax compliance projects, and provides that these funds may be allocated to the Internal Revenue Service ("IRS") and the States by the Department of Transportation ("DOT"). The amendment also directs the Secretary of Transportation to establish an advisory committee on highway use tax compliance matters. DOT is to make semi-annual reports to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works regarding motor fuel tax enforcement activities.

IV. Possible Option

Adopt each of the following:

1. Tax Rates and Extensions

Extend the expiration date of the current HTF taxes and the trust fund taxes on motorboat and small engine fuels from September 30, 1995, through September 30, 1999. Thus, for example, the gasoline tax rate (exclusive of the Leaking Underground Storage Tank Trust Fund rate) would remain 14 cents per gallon through September 30, 1995, and would be 11.5 cents per gallon from October 1, 1995 through September 30, 1999.

2. Revenue Transfers

Extend through September 30, 1999, the termination date for transferring into the HTF revenues equivalent to the taxes currently deposited into that fund.

3. Trust Fund Authorizations

a. Extend authority to spend from the HTF and transfers from the HTF to the Aquatic Fund through September 30, 1997. Extend expenditure authority from the Aquatic Fund's Boat Safety Account through April 1, 1998.

b. Incorporate the expenditure purposes provided in the Public Works amendment into the Code's HTF expenditure purposes. Clarify that the Code's expenditure purposes for the HTF and the Aquatic Fund include only those purposes specifically enumerated in the Public Works amendment and in the other Acts listed in the Code for those trust funds as of the date of the amendment's enactment.

c. With regard to the HTF revenues authorized to be transferred by DOT to the IRS to be used for motor fuels and other highway use tax enforcement funding, clarify that DOT is not authorized to impose conditions on IRS use of the funds. Provide further that IRS must submit an annual report to the House Committee on Ways and Means and the Senate Committee on Finance at least 60 days before the beginning of the fiscal year in which the funds are to be transferred to it (other than for FY 1992) detailing the increased motor fuels and other HTF tax enforcement activities to be financed.

Provide that the DOT reports on motor fuels and other highway use tax compliance are also to be submitted to the Committee on Ways and Means and the Committee on Finance in addition to the other Congressional committees specified in the Public Works amendment.

4. Budget Act Compliance

To prevent a pay-as-you-go sequester (in the event that H.R. 2950 might generate an increase in mandatory spending due to its enactment after the FY 1992 transportation appropriations bill) provide that the Secretary of Transportation shall proportionally reduce FY 1992 obligations for programs pursuant to this Act to the extent necessary to prevent outlays from this bill from exceeding outlays from the FY 1992 appropriations bill.